

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MARC R. GIFFRE

Plaintiff,

Civil Action No. 11-12009

v.

HON. MARK A. GOLDSMITH

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

/

**ORDER ADOPTING REPORT AND RECOMMENDATION, GRANTING
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT, and DISMISSING
PLAINTIFF'S COMPLAINT**

This matter is presently before the Court on the Report and Recommendation (“R&R”) of Magistrate Judge R. Steven Whalen, entered on May 31, 2012 (Dkt. 16). The Magistrate Judge recommends that the Court grant Defendant’s motion for summary judgment (Dkt. 15) and deny Plaintiff’s motion for summary judgment (Dkt. 12). Plaintiff and Defendant have not filed objections to the R&R and the time to do so has expired. Thus, Plaintiff and Defendant have waived any further right to appeal. Thomas v. Arn, 474 U.S. 140 (1985).

Plaintiff has brought suit against Defendant for denial of his application for Disability Insurance Benefits and Supplemental Security Income under the Social Security Act. The Social Security Act defines “disability” as the “inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.” 42 U.S.C. § 423(d)(1)(A). The Magistrate Judge concluded that the findings

of the Administrative Law Judge (“ALJ”) – that Plaintiff was not physically and mentally incapable of performing “unskilled work” – were supported by substantial evidence. R&R at 13-15. The Magistrate Judge also concluded that Plaintiff’s evidence submitted subsequent to the January 28, 2010 administrative decision does not constitute grounds for remand under 42 U.S.C. § 405(g), which states that the court may order additional evidence “only upon a showing that there is new evidence which is material and that there is good cause for the failure to incorporate such evidence into the record in a prior proceeding.” The Magistrate Judge concluded that Plaintiff did not show good cause for failing to furnish the evidence prior to the administrative decision, and that Plaintiff did not establish that the evidence would be material to the ALJ’s decision. R&R at 16. The Court has reviewed the R&R and finds that the Magistrate Judge has reached the correct result for the correct reasons.

Accordingly, the Magistrate Judge’s R&R (Dkt. 16) is accepted and adopted as the findings and conclusions of the Court. Defendant’s motion for summary judgment (Dkt. 15) is granted and Plaintiff’s complaint is dismissed.

SO ORDERED.

Dated: July 11, 2012
Flint, Michigan

s/Mark A. Goldsmith
MARK A. GOLDSMITH
United States District Judge

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or First Class U.S. mail addresses disclosed on the Notice of Electronic Filing on July 11, 2012.

s/Deborah J. Goltz
DEBORAH J. GOLTZ
Case Manager